PEGASUS PETROLEUM CORP.

IBLA 82-1207 Decided March 16, 1983

Appeal from decision of the Wyoming State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease, W 54408.

Affirmed.

1. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Termination

The Department of the Interior is without authority under 30 U.S.C. § 188(c) (1976) to reinstate an oil and gas lease terminated automatically by operation of law for failure to pay annual rental timely where the lessee fails to submit the entire amount due within 20 days of the anniversary date of the lease, regardless of alleged extenuating circumstances which might otherwise constitute grounds for reinstatement.

APPEARANCES: Ann M. Threlkeld, Esq., Oklahoma City, Oklahoma, for appellant.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Pegasus Petroleum Corporation has appealed the decision of the Wyoming State Office, Bureau of Land Management (BLM), dated July 23, 1982, denying its petition for reinstatement of terminated oil and gas lease W 54408. Rental for the lease in the amount of $501 was due in the Wyoming State Office on or before May 1, 1982. BLM received appellant's payment and petition for reinstatement on July 19, 1982. Since BLM did not receive the payment within 20 days of the due date, BLM ruled that it had no authority under 30 U.S.C. § 188 (1976) to reinstate the lease.

In its statement of reasons, appellant reports that it received a letter from the Minerals Management Service (MMS) of the Department of the Interior, dated March 11, 1982, requiring that "all royalties, rentals, and other payments previously submitted payable to the U.S.G.S. should now be made payable to [MMS]," and directed its clerical personnel responsible for lease rentals to follow the procedure set out in the letter. In early April 1982, although

it did not receive the usual courtesy rental notice for lease W 54408, appellant, noting that MMS' letter stated that statements for Federal and Indian lease accounts would no longer be provided and "acting in good faith but out of confusion" created by the letter, mailed the lease rentals to MMS. 1/ MMS received the payment on April 21, 1982, and retained it. 2/ In June 1982, appellant realized its error, and thereafter sent the rental and petition for reinstatement to BLM.

Appellant argues that it paid or tendered its rental timely when MMS received and deposited its payment clearly labeled with the lease number on April 21, 1982. Appellant contends that its failure to submit the payment was caused by the MMS letter and the failure of MMS to return the check or take any other reasonable step to notify it. Appellant urges that we apply our holding in Richard L. Rosenthal, 45 IBLA 146 (1980), where the lessee sent payment to the wrong BLM office 2 weeks before the due date but that office held the check for 2 weeks before forwarding it and the Board held that a lessee, although initially at fault, may reasonably expect a misdirected check to be returned or forwarded to the proper office within a reasonable time and ordered reinstatement of the lease.

1/ Appellant notes that it moved its office in November 1981 and informed BLM of the change of address by letter dated Nov. 20, 1981. Also, although it had arranged to have its mail forwarded, the March MMS letter was delivered to its old address and forwarded by staff of an affiliated company which only remained at that address until approximately Apr. 1, 1982.

The change of address letter sent to BLM was a transmittal for rental payments for two leases not at issue here and did not list lease W 54408. There is nothing in the lease file reflecting the new address until appellant's petition for reinstatement was received on July 19, 1982. In any event, the obligation to pay rental does not depend on the receipt of the courtesy notice and failure to receive it will not justify failure to pay the rental timely. Richard C. Hubbard, 68 IBLA 170 (1982).

2/ Upon inquiry by the Board, MMS reported on the disposition of appellant's check as follows:

"A review of our historical records confirms that the Pegasus Petroleum Corporation check * * * was in fact received in our Lakewood Accounting Center on April 21, 1982. The subject check was erroneously sent to the Minerals Management Service instead of the Bureau of Land Management and, consistent with manual procedures in effect at the time, was deposited on the same day received to the Denver Federal Reserve Bank. All checks received and processed by the Lakewood Accounting Center are to be accompanied by a monthly report of sales and royalty remittance (Form 9-2014). Since no report accompanied the subject check, the check was deposited into a U.S. Treasury suspense account and recorded in our accounting records as unapplied cash. This transaction should have been identified and a corresponding refund timely processed by the Accounting Center to Pegasus Petroleum Corporation. However, due to workload and staffing limitations, this was not identified by our accounting personnel and the amount has remained in our suspense account since date of deposit." MMS has since taken action to refund the payment to appellant.

[1] While we stand by our statement in Rosenthal that "this Board must recognize the Department's obligation to react to erroneous actions of members of the public with reasonable dispatch" (45 IBLA at 140) and in no manner wish to countenance lack of diligence at MMS, there is a critical distinction between the circumstances in the Rosenthal case and those presented now. Rosenthal's payment was received by the proper office within the 20-day period following the lease anniversary date and therefore the Board was exercising the Secretary's discretionary authority to reinstate the lease under 30 U.S.C. § 188(c) (1976). 3/ As we have recognized many times before, absent payment of the full rental in the proper office within 20 days of termination, the Secretary has no authority to reinstate a lease under 30 U.S.C. § 188(c) (1976). Peter R. Buehler, 67 IBLA 242 (1982); Sun Oil Co., 63 IBLA 26 (1982). We have recognized this regardless of alleged circumstances that might otherwise constitute grounds for reinstatement and despite allegations of negligence on the part of BLM contributing to termination. David Fasken, 48 IBLA 258 (1980); Reichhold Energy Corp., 40 IBLA 134 (1979), summary judgment granted for the Department, Reichhold Energy Corp. v. Andrus, Civil Action No. 79-1274 (D.D.C. Apr. 30, 1980). Cf. Davis Oil Co., 33 IBLA 53 (1977) (where lessee did not have reason to know that the lease was in rental, rather than royalty status, lease will not be found to have terminated).

BLM's decision rejecting appellant's petition for reinstatement of oil and gas lease W-54408 filed pursuant to 30 U.S.C. § 188(c) (1976) must be affirmed. We note, however, that section 401 of the recently enacted Federal Oil and Gas Royalty Management Act of 1982, P.L. 97-451, 96 Stat. 2447, signed January 12, 1983, amends section 31 of the Mineral Leasing Act of 1920, 30 U.S.C. § 188 (1976) to afford an additional opportunity to reinstate a lease terminated by operation of law. 4/

3/ This case is also distinguishable from Rosenthal by virtue of the fact that the office receiving payment in this case was appropriate for the filing of royalty payments for oil and gas leases and, thus, it was not obvious that the payment was sent to the wrong office. In Rosenthal, supra, the rental payment for a Wyoming lease, accompanied by the billing statement identifying the payment as annual rental for a Wyoming lease, was received by the Colorado office of BLM which clearly could not apply the payment to the rental for a Wyoming lease.

4/ Section 401 added the following new subsection (d)(2) to 30 U.S.C. § 188 (1976):

"(2) No lease shall be reinstated under paragraph (1) of this subsection unless --

"(A) with respect to any lease that terminated under subsection (b) of this section prior to Jan. 12, 1983 enactment of the Federal Oil and Gas Royalty Management Act of 1982:

"(i) the lessee tendered rental prior to Jan. 12, 1983 enactment of such Act and the final determination that the lease terminated was made by the Secretary or a court less than three years before enactment of such Act, and

"(ii) a petition for reinstatement together with the required back rental and royalty accruing from the date of termination, is filed with the Secretary on or before the one hundred and twentieth day after enactment of such Act, or

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Wyoming State Office is affirmed.

Will A. Irwin
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

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fn. 4 (continued)

"(B) with respect to any lease that terminated under subsection (b) of this section on or after enactment of the Federal Oil and Gas Royalty Management Act of 1982, a petition for reinstatement together with the required back rental and royalty accruing from the date of termination is filed on or before the earlier of --

"(i) sixty days after the lessee receives from the Secretary notice of termination, whether by return of check or by other form of actual notice, or

"(ii) fifteen months after termination of the lease."

Since BLM has not yet promulgated regulations addressing what time limits shall apply under this section to leases terminated before enactment of the Act where denial of reinstatement is upheld by the Board on behalf of the Secretary after enactment, if it wishes to avail itself of this provision appellant should inquire promptly at the Wyoming State Office of BLM.